

§ 105-129.84. (See notes) Tax election; cap; carryforwards; limitations.

(a) Tax Election. – The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of this Chapter, and the gross premiums tax levied in Article 8B of this Chapter. The taxpayer may divide a credit between the taxes against which it is allowed. Carryforwards of a credit may be divided between the taxes against which it is allowed without regard to the original election regarding the division of the credit.

(b) Cap. – The credits allowed under this Article may not exceed fifty percent (50%) of the cumulative amount of taxes against which they may be claimed for the taxable year, reduced by the sum of all other credits allowed against those taxes, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article for the taxable year.

(c) Carryforward. – Unless a longer carryforward period applies, any unused portion of a credit allowed under G.S. 105-129.87 or G.S. 105-129.88 may be carried forward for the succeeding five years, and any unused portion of a credit allowed under G.S. 105-129.89 may be carried forward for the succeeding 15 years. If the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase or lease, and place in service in connection with an eligible business within a two-year period, at least one hundred fifty million dollars (\$150,000,000) worth of business and real property, any unused portion of a credit under this Article with respect to the establishment that satisfies that condition may be carried forward for the succeeding 20 years. If the taxpayer does not make the required level of investment, the taxpayer shall apply the standard carryforward period rather than the 20-year carryforward period.

(d) Statute of Limitations. – Notwithstanding Article 9 of this Chapter, a taxpayer shall claim a credit under this Article within six months after the date set by statute for the filing of the return, including any extensions of that date.

(e) Credit Treated as Tax Payment. – The owner of a pass-through entity that claims a credit under this Article may treat some or all of the credit claimed as a tax payment made by or on behalf of the taxpayer. A credit claimed that is treated as a tax payment is subject to all provisions of this section. A credit claimed that is treated as a tax payment does not accrue interest under G.S. 105-241.21 if the payment is determined to be an overpayment. A taxpayer that elects to have a credit claimed under this Article treated as a tax payment must make this election when the return is filed. (2006-252, s. 1.1; 2011-297, s. 4; 2013-414, s. 4.)